

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

MICHAEL HEIT,

Plaintiff,

v.

AEROTEK, INC., and GENIE  
INDUSTRIES, INC.

Defendants.

COMPLAINT FOR DAMAGES

Michael Heit (Plaintiff) alleges and complains against Aerotek, Inc. and Genie Industries, Inc. (Defendants) as follows:

**I. JURISDICTION AND VENUE**

a. This action arises from an employment application involving Plaintiff and Defendants. Plaintiff alleges causes of action based on violations of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, and on violations of Washington state law (RCW 49.60 *et seq.*).

b. Defendant Aerotek, Inc. is a Maryland corporation registered to do business in Washington. Defendant Genie Industries, Inc. is a Washington corporation registered to do business in Washington.

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c. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337, and 1343. The Court has ancillary or supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

d. Venue is proper in this Court under 28 U.S.C. § 1391 because the employment practices giving rise to Plaintiff's claims transpired in the Western District of Washington, and Plaintiff was a resident of the Western District of Washington at all material times.

e. Plaintiff timely filed a claim with the Washington State Human Rights Commission. That filing constituted a joint filing with the federal Equal Employment Opportunity Commission (EEOC) pursuant to a work sharing agreement between the two agencies. The claim contained the same allegations of discrimination as Plaintiff raises in this Complaint. In October 2015, the EEOC provided Plaintiff with a right to sue notice. Accordingly, this suit is timely filed.

## II. FACTS

a. Defendant Aerotek is a nationwide concern that provides human resources services to other entities, including services related to hiring employees. Defendant Genie Industries manufactures heavy equipment. Pursuant to contract, at the time of the acts described herein, Defendant Aerotek processed employment applications and provided other hiring services to Defendant Genie Industries at a Genie Industries facility in Redmond. At all times pertinent herein, Defendant Aerotek acted as Defendant Genie Industries' agent.

b. In October 2013, Plaintiff responded to a job posting for a welding position with Genie Industries in Redmond. Defendant Aerotek administered all facets of the application process. As part of that process, Plaintiff had to pass both written and welding tests before

1 qualifying for the position. He fulfilled that obligation on December 2, 2013. He was then  
2 offered a night welding position, subject to passing a drug test.

3 c. Plaintiff has a medical condition which prevents him from taking the drug test in  
4 the manner in which Defendant Aerotek insisted that it be administered. Plaintiff notified  
5 Defendant Aerotek about his medical condition and how it disabled him from taking the test.  
6 He offered at his own expense to undergo drug testing by alternate means, testing which is at  
7 least as reliable as the manner in which Defendant Aerotek insisted upon. Nonetheless,  
8 Defendant Aerotek refused to provide the requested accommodation.  
9

10 d. On January 2, 2014, desperate to get the job with Defendant Genie Industries,  
11 Plaintiff attempted to take the test in the manner Defendant Aerotek insisted upon. He did  
12 not succeed. On January 7, 2014, Plaintiff visited a medical clinic to discuss his condition.  
13 He obtained a physician's note stating that his medical condition did, in fact, preclude him  
14 from taking the drug test in the required manner. He then faxed the note to a recruiter for  
15 Defendant Aerotek. That recruiter informed Plaintiff that he was no longer a candidate for  
16 the position because he had not passed the drug test.

17 e. In February 2014, through counsel, Plaintiff informed both Defendants that he  
18 still wanted to work for Defendant Genie, and that he would request accommodation to be  
19 permitted to undergo an alternative drug test. Defendants refused his request.  
20

21 **III. DISABILITY DISCRIMINATION**  
22 **(Americans with Disabilities Act)**

23 a. Defendants are both employers employing more than 15 employees. In  
24 withdrawing the job offer made to Plaintiff because of his medical condition, as described  
25

above, Defendant Aerotek discriminated against Plaintiff because of his disability. Moreover, Defendant Aerotek failed to accommodate Plaintiff's disability during the job application process by refusing to provide him an alternative means of taking the test. By participating in a contractual relationship with Defendant Aerotek with regard to screening its job applicants, Defendant Genie Industries subject a qualified applicant, Plaintiff, to unlawful discrimination. The accommodation Plaintiff sought would have caused neither defendant undue hardship.

b. The discrimination Plaintiff experienced in the job application process caused him to suffer damages, both special and general, including but not limited to severe emotional distress, emotional trauma, physical pain and suffering, loss of earnings, both past and future, loss of promotional opportunities both past and future, and such other special and general damages as will be proven at the time of trial. Defendants' conduct constitutes a violation of 42 §USC 12101 *et seq.*

c. Defendants' acts were undertaken intentionally or with reckless disregard for Plaintiff's federally-protected employment rights. To deter future such abusive conduct, Plaintiff seeks punitive damages from Defendants. He is also entitled to recover his litigation costs and attorney's fees pursuant to 42 U.S.C. § 2000e-5(k).

## **II. DISABILITY DISCRIMINATION (RCW 49.60.180)**

a. At the time he applied for a position with Defendant Genie Industries, Plaintiff suffered from a disability, or Defendants perceived him as suffering from a disability.

b. Despite this disability or perceived disability, Plaintiff was capable of taking a drug test and of performing the essential functions of his job, at least if provided appropriate accommodation.

c. Plaintiff's disability, or Defendant's perception of Plaintiff's disability, or his need for accommodation of his disability, was a substantial factor in Defendants' decision to not hire Plaintiff. Accordingly, Defendants' refusal to hire Plaintiff constituted a violation of RCW 49.60.180.

d. As a proximate result of Defendants' wrongful refusal to hire him, Plaintiff has suffered those damages set forth in ¶ III.b. above, and is entitled to all remedies which RCW 49.60.030 provides.

### III. PRAYER FOR DAMAGES

WHEREFORE, Plaintiff prays that judgment be entered against Defendants and that he be awarded the following:

- i. Damages for lost income, including lost future income;
- ii. Damages for lost pecuniary benefits, including lost future pecuniary benefits;
- iii. Damages for emotional distress;
- iv. Damages for pain and suffering;
- v. Prejudgment interest;
- vi. Punitive damages;
- vii. Damages to alleviate any tax consequences of an award of compensatory or punitive damages;
- viii. Reasonable attorneys' fees and costs; and

ix. Such other and further relief as might be appropriate.

Dated this 17<sup>th</sup> day of November, 2015.

SCOTT, KINNEY, FJELSTAD & MACK, PLLC

s/ Daniel R. Fjelstad

Daniel R. Fjelstad, WSBA #18025

Attorneys for Plaintiff